

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES BELL, JR.,  
Petitioner,  
v.  
KENNETH QUINN,  
Responder

Case No. C07-5598FDB-KLS

**REPORT AND  
RECOMMENDATION TO DENY  
APPLICATION TO PROCEED  
*IN FORMA PAUPERIS***

Noted for December 21, 2007

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Monroe Correctional Complex at the Washington State Reformatory, located in Monroe, Washington. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. (Dkt. #1). Because petitioner appears to have sufficient funds with which to pay the \$5.00 Court filing fee, the undersigned recommends the Court deny the application.

## **DISCUSSION**

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. See 28 U.S.C. § 1915(a). However, the district court has broad discretion in denying an application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when

1 a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*,  
2 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595 (S.D.Tex. 1977); *U.S. ex rel. Irons v.*  
3 *Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku v. Britton*, 357 F.Supp. 825 (D.Kan. 1973),  
4 *aff'd*, 503 F.2d 38 (10<sup>th</sup> Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

5 By requesting the Court to proceed *in forma pauperis*, petitioner is asking the government to incur  
6 the filing fee because he allegedly is unable to afford the costs necessary to proceed with his petition for  
7 *habeas corpus*. In his application, petitioner states he currently is employed, earning \$55.00 per month.  
8 His prisoner trust account statement also shows he has average monthly receipts of \$171.66 and an  
9 average spendable balance of \$33.91. While the undersigned recognizes that the funds to which  
10 petitioner has access may not be great, given the fact that a prisoner's basic needs are provided for while  
11 incarcerated and the minimal filing fee required to proceed with this action (\$5.00), it is not unreasonable  
12 to expect petitioner to pay that fee from those funds.

13 **CONCLUSION**

14 Because it is reasonable to expect petitioner to incur the costs to proceed with his petition, the  
15 undersigned recommends that the Court deny his application to proceed *in forma pauperis*. Accordingly,  
16 the undersigned also recommends that the Court order petitioner to pay the required filing fee **within**  
17 **thirty (30) days** of the court's order.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),  
19 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
20 objections thereto. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those  
21 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit  
22 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **December 21,**  
23 **2007**, as noted in the caption.

24 Dated this 29th day of November, 2007.

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Karen L. Strombom  
United States Magistrate Judge